

consumers precludes any likelihood of confusion. Upon consideration of all these factors, it is submitted that the marks are not confusingly similar.

A. The Marks are Sufficiently Different in Appearance, Sound and Meaning to Avoid Any Confusion

Applicant's mark and the cited registrants' marks are sufficiently different in appearance to avoid any confusion. It is well established that when comparing marks to determine if a likelihood of confusion exists, each mark must be viewed in its entirety to determine the similarity or dissimilarity of the marks. In re Bed and Breakfast Registry, 791 F.2d 157, 159 (Fed. Cir. 1986). Furthermore, it is improper to consider only the portions of the marks that are identical without taking into consideration the remainder of Applicant's mark. As discussed by Professor McCarthy:

[M]arks must be compared in their entireties. A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important. As the Supreme Court observed: "The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety."

3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 23:41, at 23-122 (4th ed. 2002) (hereinafter "McCarthy") (quoting Estate of P.D. Beckwith, Inc. v. Commissioner Patents, 252 U.S. 538 (1920)). In comparing the marks SPACELIFT on one hand, and SPACE on the other, as a whole, the marks are not confusingly similar. Specifically, the Applicant's mark is a composite mark, which is different in overall sight and sound to the registrant's SPACE mark. Moreover, the marks connote very different meanings, with SPACELIFT suggesting an object in motion, while SPACE suggests a boundless three-dimensional region.

B. The Goods and Services at Issue are Different

The goods in Applicant's description of goods and cited registrant's description of goods are sufficiently different to avoid a likelihood of confusion. Furthermore, the mere fact that Applicant's goods and the cited registrant's goods are in the general field of lifting systems is not determinative on the issue of likelihood of confusion.

Applicant's goods are "installed, power-operated lifts and platforms for use in transporting objects to and from a residential storage area, and automated and manually deployable ladders." In particular, Applicant initially offers for sale two products—referred to as the SpaceLift 5000 and 6000—that provide convenient, automated access to a residential storage area, such as above a garage or living quarters. The SpaceLift 5000 provides an automated lift platform that enables objects to be transported from a room below to a storage space above. The SpaceLift 6000 provides an automated lift platform that includes a telescoping ladder (or stairway), enabling transportation of objects as well as manual climbing access to the storage

space. Both the SpaceLift 5000 and 6000 are intended to be permanently installed in the home. Applicant encourages the Examining Attorney to visit the Applicant's website at www.spaceliftproducts.com to get a better appreciation of the goods offered in connection with the mark SPACELIFT. Applicant also encloses a brochure showing the use of the mark SPACELIFT in connection with these goods.

In contrast, the registrant's goods are "electronic monitors for loading and lifting cranes." Registrant provides large industrial cranes and truck mounted forklifts for use in building construction projects (see www.hiabus.com). These are transportable systems affixed to vehicles that may be moved from one construction site to another. Notably, the mark SPACE is not used in connection with the cranes and forklifts, but rather are used in connection with electronic systems that monitor and control operation of the cranes. The registrant does not appear to use the mark in association with any of its lifting systems. Of particular significance, none of the registrant's lifting systems are intended for residential use, and none are intended to be permanently installed in connection with a residential storage space. Lastly, none of the registrant's lifting systems include an automated or manually deployable ladder.

The Examining Attorney erred in concluding that the cited registrant's goods are related to Applicant's goods merely because they both are in the general field of lifting systems. Rather, the Examining Attorney must consider the true nature of the goods protected by the registration. The foregoing descriptions of the Applicant's goods and the registrant's goods shows them to be very different in terms of size, cost, appearance, customer base, channels of trade, and intended application. As the evidence shows, cited registrant's goods are highly specialized and registration of Applicant's mark will not cause confusion amongst consumers.

C. The Sophistication of the Consumers

The consumers of Applicant's SPACELIFT branded automated storage access products are homeowners. These consumers will find the SPACELIFT branded automated storage access products in retail outlets that carry appliances and furnishings for the home. While these consumers may be sophisticated and discerning with respect to selecting home products, they will generally have little knowledge of large industrial cranes and forklifts of the type sold by registrant.

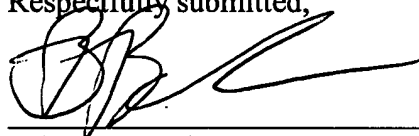
In contrast, the consumer of registrant's SPACE branded electronic control systems for cranes are construction contractors for building projects. These goods would not be sold through retail outlets, but rather would be carried by highly specialized dealers that cater to the construction industry. As such items are quite expensive, and are purchased by a person with knowledge of the detailed specifications of large industrial construction equipment, the "reasonably prudent person" standard is elevated to the standard of the "discriminating purchaser." A purchaser will only buy such a product, which is costly and purchased quite infrequently, after careful consideration.

Accordingly, confusion is less likely than where the goods or services are cheap and bought casually. See 3 McCarthy, §23:96, at 23-246. The sophistication and discrimination of the respective purchasers of Applicant's goods and the cited registrants' goods support the conclusion that confusion is not likely to result from the registration of Applicant's mark. See Electronic Data Systems Corp., 23 U.S.P.Q.2d, at 1465; see also In re Software Design, Inc., 220 U.S.P.Q. 662, 663 (T.T.A.B. 1983). As such, purchasers are unlikely to be confused between Applicant's goods and the cited registrants' goods, and the respective marks in connection therewith.

III. Conclusion

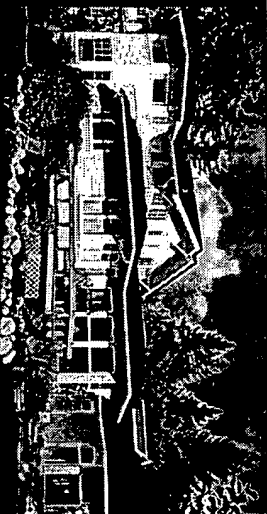
Based on the foregoing, Applicant respectfully requests that the request for reconsideration be granted, the refusal under Section 2(d) be withdrawn, and that the subject application be passed to publication.

Respectfully submitted,



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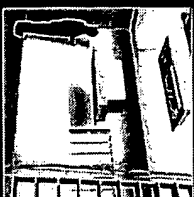
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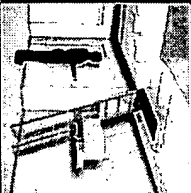
Convenient Home Storage Is Looking Up

New Spacelift Attic Lift Systems Provide The Ultimate Home Storage Solution.

Whether you're building a dream home or remodeling, the revolutionary new Spacelift attic lift systems provide the ultimate storage solution with convenient, automated and cost-effective attic access. Every homeowner knows their attic is a natural place for storage and Spacelift systems make the process as simple as possible.



Spacelift Model 5000



Spacelift Model 6000

Need Your Space?

There are two Spacelift automated storage systems. The Spacelift 6000 model features a telescoping stairway that automates the traditional fold-down attic ladder application. The Spacelift 5000 model provides a basic lift capability in lofts or other spaces where an integrated stairway is not required. Both Spacelift models feature proprietary technologies in an automated lift platform mechanism, mounted into a 22-1/2 x 54 inch framed attic opening, which includes a mechanical drive train that lifts and lowers the platform using four aviation-quality steel cables.

Spacelift automated storage systems require installation through your authorized Spacelift dealer. Requirements and specifications include:

Installation Requirements

- Standard 22-1/2 x 54 inch framed attic opening
- Electrical power available (110 Volt AC)
- Attic floor supports 35-lbs/sq foot loads
- Open truss attic construction

Specifications

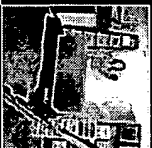
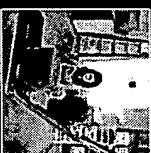
- Internal platform area: 18" x 40"
- Wall-mounted remote control
- Lift weight capacity: 75 pounds
- Lift speed: one-half ft/second

Spacelift

RAISING STORAGE TO A HIGHER LEVEL

Visit spaceliftproducts.com

Ask Your Spacelift Dealer For Details.



Spacelift

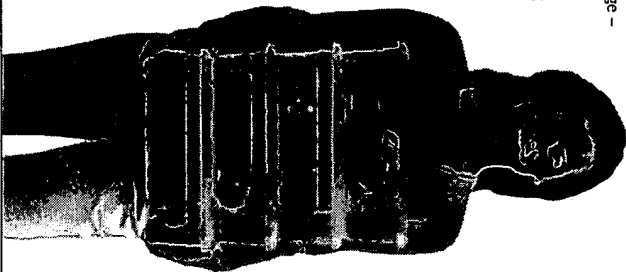
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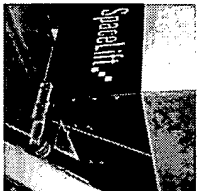
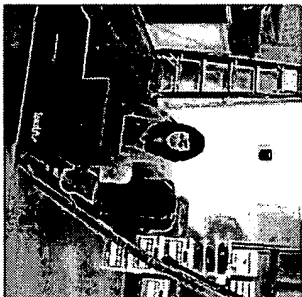
Spacelift Product Features and Benefits.

Spacelift technology takes the concept of convenient home storage to the next level. Features and benefits include:

- **Security Access Control** – the wall-mounted wireless Spacelift remote control unit requires security code activation. Redundant switch contacts prevent unwanted operation and inadvertent movement of the lift platform.
- **Convenient Home Storage** – transforms unused attic space into 24/7 access storage while eliminating the expense and hassle of offsite rental units.
- **Reclaim the Garage** – with Spacelift attic storage systems you can once again park your cars in the garage (where vehicles belong).
- **Save the Back** – automated Spacelift systems replace the challenging and back-wrenching chore of carrying items up and down a traditional attic ladder.
- **Added Home Value** – Spacelift automated storage systems add a unique and valuable amenity to your home, whether new construction or a remodel.
- **75-Pound Capacity** – the 18 x 40 inch Spacelift platform is large enough to carry boxes, packages and other household items (but never any people or pets) with a maximum load of 75 pounds.
- **Load Management System** – the sophisticated Spacelift impact detection system automatically stops or auto-reverses lift platform operation with any contact or if excessive weight is loaded.



Spacelift Model 6000



- **Loading and Unloading** – the 6000 model lift platform, on the floor or in the final stowed position, is secured for loading and unloading. The 5000 model, which rises directly into the framed opening, features a locking mechanism to secure the lift platform in the final stowed position.
- **Quality and Reliability** – Spacelift automated storage systems are designed with the highest considerations for product quality and functional reliability. Components include high-performance motor drive train, aviation-quality steel cabling and the pressure sensitive impact detection and load management system.



- **Microprocessor Control** – in addition to security, the Spacelift control unit enables a number of special test and adjustment modes to keep the systems functioning at optimal levels.
 - **Proprietary Technology** – Spacelift automated storage systems are protected by a substantial portfolio of pending U.S. and international patent applications. This core proprietary technology is integral to future Spacelift products to further enhance the convenience of home storage.
- A Spacelift automated storage system will help you make the most of every square foot of living space. Ask your Spacelift dealer for installation details.

Spacelift

RAISING STORAGE TO A HIGHER LEVEL

Visit spaceliftproducts.com

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